

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1532 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

AMERSY EXPORTS PVT LTD

Versus

STATE OF GUJARAT

Appearance:

MR VM TRIVEDI for Petitioners
MR RV DESAI, AGP, for Respondent No. 1
MR AK CLERK for Respondent No. 3

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 26/06/2001

ORAL JUDGEMENT

The present petition is filed by Amarsy Exports Private Limited challenging the order dated 20.2.2001, which is produced at Annexure-K to the petition, on various grounds. Before the said challenge can be

examined, the short facts giving rise to the present proceedings are required to be stated herein.

2 That certain demands of the workers of the petitioner-unit were pending for the last about 10 months, as is mentioned in the public notice dated 16.10.1999, which was issued by the petitioner, a copy of which is at Annexure-C to the petition. It is the case of the petitioner that in support of the said demands the workers issued threats and there was deliberate go-slow attitude on the part of the workmen and as an off-shoot of the said attitude of the workers, on the night preceding 6.10.1999 i.e. there was some rioting in the unit and damage was caused by stoning and therefore the management had declared lock out. This fact is borne out from the public notice, which is produced at Annexure-C to the petition.

3 The Assistant Commissioner of Labour, Valsad, has filed an affidavit-in-reply in Special Civil Application No.1313 of 2000, wherein in para 3 it is stated that the Union had raised a charter of demands vide letter dated 21.1.1999 and the Assistant Commissioner of Labour, Valsad, had registered Case No.6 of 1999. A preliminary discussion was held between the parties on 3.2.1999 and 10.2.1999. It is also stated in the said affidavit-in-reply that various demands were admitted into conciliation on 10.2.1999. Thereafter the conciliation proceedings were in progress between 22.2.1999 to 12.4.1999. But as both the parties did not come to an amicable settlement, a failure report under Section 12(4) of the Industrial Disputes Act, 1947, was submitted to the State Government vide letter No.ACL/VAL/IDC/2746 to 2748 dated 5.5.1999. These dates become relevant as the validity of the lock out, which came to be declared on 6.10.1999, is the subject matter of order dated 20.2.2001.

3 Mr Vikram Trivedi, learned advocate for the petitioner, submitted that the order dated 20.2.2001 is a non-speaking order, no reasons are set out in the said order, though it was directed by this Court that the Government shall pass an order giving its reasons. Order dated 20.2.2001 reveals hearing was given to both the parties and after considering the say of the parties the Government was of the opinion that the 'lock out' declared by the management on 6.10.1999 is a subject matter of an industrial dispute. With a view to have an adjudication of the same, it was referred to the Industrial Tribunal by the impugned order. The contentions raised by Mr Trivedi has no merits. The said

order cannot be said to be vitiated on the ground of not specifying the reasons. When the authority has thought it fit to get the validity of the 'lock-out' adjudicated upon by a judicial forum, mere fact of not giving reasons can not be fatal to the order.

4 Mr Trivedi further submitted that Section 23 of the Industrial Disputes Act, 1947, provides for 'general prohibition of strikes and lock out' while clause (b) provides that, "during the pendency of the proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings there shall not be any lock out by the employer." Mr Trivedi submitted that the lock out, which was declared by the management was not an illegal one as it was declared because the failure report was submitted on 5.5.1999 and the dispute was referred only on 11.1.2000 and during in between no proceedings were pending.

5 Mr Trivedi further submitted that the 'lock out' was declared in connection with the demands raised by the employer. The management had written a letter dated 25.11.1999 to the Conciliation Officer, Valsad, raising certain demands. According to Mr Trivedi the action of the Government of issuing the present impugned order dated 20.2.2001 without any adjudication qua those demands is illegal, not only that the order before making the reference is also not in accordance with law. Mr Trivedi placed reliance on the judgement of the Apex Court in the matter between DELHI ADMINISTRATION V. WORKMEN OF EDWARD EVENTERS AND ANOTHER reported in 1978 2 LLJ 209. Mr Trivedi submitted that the Apex Court has held that Section 10(3) of the ID Act will be applicable only if two conditions are fulfilled, namely, there must be an industrial dispute existing and such existing dispute must have been referred to a Board, Labour Court, Tribunal or National Tribunal under this Section. He also submitted that the Apex Court has held that Section 10 stands as a self-contained Code as far as this subject matter is concerned. He also submitted that the prohibitory power springs into existence only when such dispute has been made the subject-matter of reference under S.10(1). There cannot be any dispute about the proposition of law laid down by the Apex Court but the same has no application to the facts of the present case. A plain reading of Section 10(1) and Section 10(3) of the Act makes it clear that the submissions made by Mr Trivedi has no force and the same are required to be rejected.

6 Mr Trivedi has also relied upon a judgement in

the case of M.K. MILLS V. STATE OF RAJASTHAN reported in AIR 1953 Rajasthan at page 188. Mr Trivedi submitted that as laid down by the Honourable High Court of Rajasthan, "An order prohibiting a strike or lock out can only be made where such strike or lock-out might be in its connection, something different from the strike or lock-out itself. Where the strike or lock-out itself is the dispute the law does not contemplate that an order for its discontinuance should be made under S.10(3)." The proposition of law though acceptable has no application to the facts of the case on hand.

7 From the discussion made hereinabove, it is clear that the lock out, which is alleged to have been in connection with the so called demands raised by the management is not supported by the facts of the case. On the contrary, it is clear that the said 'lock out' was in connection with the demands of the workmen, which were raised by letter dated 21.1.1999.

8 Mr Clerk, learned advocate for respondent no.3, submitted that a perusal of the notice dated 6.10.1999 makes it clear that the demands of workers were pending at the relevant time and it is pursuant to those demands, as alleged by the management, some wrong took place on the preceding night of 6.10.1999 and therefore management declared the 'lock-out.' The demands which are raised by the management by letter dated 25.11.1999 (Annexure-E to this petition) it is clear that the same are not preceding the lock out. Mr Clerk submitted that in view of these facts, the judgement of the Apex Court is not applicable. He also submitted that the facts of the present case do not support the contention raised by Mr Trivedi.

9 Mr Clerk further submitted that in the present case the so called demands were raised by the management by a letter dated 25.11.1999 whereas the lock out was declared earlier, as admitted by the management on 6.10.1999. Even as per the provisions of Section 10(1) and 10(3), do not require that there should be a demand raised by the management before the lock out could be prohibited. The notice dated 6.10.1999 and the letter dated 25.11.1999 make it clear that the lock out declared by the management is not in pursuance to the so called demand raised by the management. The lock out could not have preceded the demands, even if the contents of letter dated 25.11.1999 are treated to be demands same were raised on 25.11.1999 only.

10 Mr Clerk then submitted that in fact it was the

union which gave an application immediately on the date on which the lock out was declared, which is produced at Annexure-A to Special Civil Application No.1313 of 2000 wherein it was demanded that the management has declared illegal lock out and that the authorities - The Asst. Labour Commissioner - Valsad, should get it removed and shall see that the workmen are reinstated to their original place with continuity of service and back-wages.

11 Mr Clerk submitted that in view of the facts that the lock out which was declared on 6.10.1999 and as the demands of the workmen were referred to on 11.1.2000, the authorities were within their rights and the power conferred under Section 10(3) in prohibiting the 'lock out' by an order under challenge. Mr Clerk alternatively submitted that in fact the prohibition should have been made effective from 11.1.2000 and not from the date of the passing of the order i.e. 20.2.2001. He further submitted that the order is not only clear but is in accordance with law. By the order the subject matter is referred to Industrial Tribunal for adjudication and under the provisions of Section 10(3) of the Act the continuance of 'lock out' is prohibited.

12 The present petition is without any substance inasmuch as the order passed by the authorities dated 20.2.2001 is in accordance with the provisions of Industrial Disputes Act, 1947, and also in accordance with two orders passed by this Court on 8.3.2000 and 19.12.2000 passed in Special Civil Application No.1313 of 2000.

In the result, this petition fails and the same is rejected. Ad interim relief granted earlier stands vacated.

13 Mr Trivedi, learned advocate for the petitioner, requests that the ad-interim relief granted earlier may be continued for a period of two weeks. The request has no merits. Same is therefore rejected.

(Ravi R Tripathi, J.)

(mohd)